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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,930	02/10/2006	Yasushi Miyajima	285627US6PCT	5384
22850	7590	08/20/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER RAJAN, KAI	
			ART UNIT 3736	PAPER NUMBER
			NOTIFICATION DATE 08/20/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

### Office Action Summary

**Application No.**

10/567,930

**Applicant(s)**

MIYAJIMA ET AL.

**Examiner**

Kai Rajan

**Art Unit**

3736

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 - 4, 6 - 14, 16 - 21, and 23 - 26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 - 4, 6 - 14, 16 - 21, and 23 - 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Examiner acknowledges the amendment filed June 3, 2008, from which claims 1 – 4, 6 – 14, 16 – 21, and 23 – 26 are pending.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 3, 2008 has been entered.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 – 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claims 1 – 26, it is unclear to the Examiner as to the metes and bounds of "relationships among bio-information." There is no definite explanation of the term "relationship" within the specification and dependent claims. After a reading of the specification, the Examiner has found examples of "relations" between different data, however these are not

positive definitions. Applicant is invited to point out and clarify support within the specification for the "relationships" as claimed, or amend the claim language to clarify the "relationship" or "relation" among the measured data.

Furthermore, the term "on the basis of" renders the claims indefinite since it is unclear as to what extent the images are created dependent on the bio-information. In particular, the claim language is not clear as to whether the bio-information of the plurality of users is actually processed in comparison to one another, or whether the images are created from the data of a user's reaction to another person's image.

Note to Applicant Regarding Claim Interpretation

The term "configured to" in the claim(s) may be interpreted as intended use. Intended use/functional language does not require that reference specifically teach the intended use of the element. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3736

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1 – 4, 6 – 14, 16 – 21, and 23 – 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Scholl et al. U.S. PGPub No. 2002/0197967 (Scholl).**

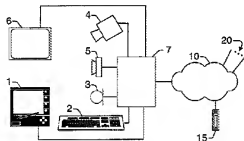


FIG. 1

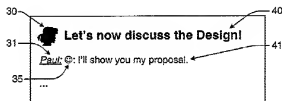


FIG. 2

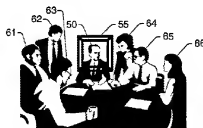


FIG. 3

Scholl discloses an interactive networked communication system as depicted above in figures 1, 2, and 3. The system comprises a plurality of devices for collecting voice, text, and

image data from users in remote locations (Paragraph 0027, figure 1). Each user also has a display connected to the network that displays images of the communication between remote locations. During operation, each set of devices captures voice, image, and text data. Data may be entered by method of speech, handwriting, or text by use of a keyboard (touch signal). The recorded data is transmitted to the other users via the network, and displayed as a conversation with an avatar representing said user (Figure 2, items 30, 31, 35). The system also processes the recorded data from each user to determine the mood or emotion of the user, which is displayed as an emoticon embedded within the conversation (Paragraphs 0030 – 0033, figure 2). The displayed emoticon is a result of the mood of the user, which is affected by the user's conversation with remote users, and therefore is determined "on the basis of relationships among the bio-information" of the users. The system also comprises video and audio sensors that monitor the environment of users, to determine which particular user is speaking (Paragraphs 0034 – 0038, figure 3). The displayed conversation changes depending on which user is presently speaking, thus reflecting the "environment of the plurality of persons under measurement."

### ***Response to Arguments***

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kai Rajan whose telephone number is (571)272-3077. The examiner can normally be reached on Monday - Friday 9:00AM to 4:00PM.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kai Rajan/  
Examiner, Art Unit 3736

/Michael C. Astorino/  
Primary Examiner, Art Unit 3736

August 14, 2008